

2015 SENATE JUDICIARY

SB 2193

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2193
1/26/2015
22493

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1,2,3,4,5

Ch. Hogue: We will open the hearing on SB 2193.

Courtney Koebele, Exec. Director, ND Medical Association: Support (see attached #1).

Sen. Dick Dever: Sponsor, support. Some people don't know what it means to live in a civilized society. That is what this bill is about. These days because of disease and contamination, health care providers go to great lengths to protect themselves and their patients with rubber gloves and sanitization, etc. and then some people do these kinds of things. We have previously protected peace officers, correctional officers and others from this; we should protect everybody from this. This bill isn't talking about people who have mental health issues because that's specifically excluded in the bill. It's the people that know what they are doing and they do it.

Ch. Hogue: Thank you.

Sen. Armstrong: This is kind of a policy shift, in my opinion, because every other person protected by this works for the state or local government, for emergency responses. Give me a situation where this would occur and while you are asking for the protection.

Courtney Koebele: We have some health care providers here to testify as to certain circumstances where this we would be very helpful. Health care providers are seeing people at their most vulnerable. They sometimes don't have a choice as to when they are seeing people. They are obligated to perform their services. They are not working for the state, although one of the

protected classes is a person who is at the penitentiary, is protected in the second section of the bill.

Sen. Armstrong: My concern is with the first section which is the C felony portion.

Sen. Luick: How often do you see cases like this? Is it an everyday occurrence or happens daily, weekly, monthly?

Courtney Koebele: I think it depends on the type of clinic or situation. I've heard stories about situations and clinics that this occurs, maybe on a weekly basis. Dr. Price is here as well as some nurses from different facilities that could probably answer your question in more detail.

Ch. Hogue: Are we talking mostly the ER room, where somebody got a little too enthusiastic with the party and now they are presenting at the ER with public intoxication, or something like that.

Courtney Koebele: Yes, they are seeing an increase, but they are also seeing an increase in threatening behavior in all sorts of settings. For example, they are seeing this in the OB department have to get restraining orders against some people. It's not only an emergency room problem. We are seeing an increase in assaults and more aggressive nature.

Sen. Hogue: Thank you.

Tyler Price, ER Physician: Support (see attached #2). It is not our desire to apply this bill to the mental health patients.

Sen. Casper: What was the resolution for what happened to you?

Tyler Price: My understanding was that the gentleman was charged with a class F felony, because he had actually impinged my airway for a brief moment in time. My hope is that if this type of incident occurs when the patient is admitted to the hospital, for instance. The hospitalist is in the room and the patient is demanding pain medicine. They become upset and take a swing or they throw something at him; pull an IV out and blood with hepatitis C or HIV, that is highly contagious and goes into that physician or nurse, or ancillary staff and hopefully there is some protection there. I don't know if it is that the society is moving toward a more aggressive and violent time but often we see these patients more and more.

Ch. Hogue: What is the arrangement that your institution has with the Bismarck Police Dept.? Is there somebody on staff, someone patrolling the ER?

Tyler Price: I work at St. Alexius here in Bismarck. We have no direct affiliation with the police dept. When there is a staff emergency, a security emergency, there is a Code Yellow that goes out. The Code Yellow is paged over the entire hospital so that security personnel, some of the psych floor nurses that have that skill in restraining patients are all called down. My understanding is that the police dept. is also called just to alert them. In my case, where I was being put in the chokehold by a patient, it took almost 20 minutes for help to arrive. It was I and a fellow physician, Gordy Leingang, who had to restrain the patient until the police got there. Blood was all over and it was us 2 doctors and 4 female nurses. He was a big guy; luckily the intoxication level kind of gave us an upper hand with two of us. We don't have a direct way.

Ch. Hogue: So St. Alexius relies on internal security to bring those situations under control.

Tyler Price: In Omaha, we had actual Omaha Police Dept. at our front door, 24/7.

Sen. C. Nelson: In section 2, we're talking about all sorts of fluids. You commented about blood, how does that happen when you were being strangled; it seems to me that there would be an assault charge rather than what section 2 is talking about. It looks like these are all fluids that they are talking about in that section; basically in the definition that Courtney gave us. Your example is out of this bill except that you mentioned blood. Where did the blood come from?

Tyler Price: This gentleman had an IV, and it came out. As to the physical vs. bodily fluids I would have to refer that question to someone else.

Ch. Hogue: Thank you. Further testimony in support.

Jerry Jurena, President, ND Hospital Association: Support (see attached #3).

Ch. Hogue: Thank you. Further testimony in support.

Tammy Buchholz, ND Nurses Association: Support (see attached #4, letter from Kristin Roers).

Ch. Hogue: You mentioned the data; is there any data about the number of medical professional workplace assaults that happened in the emergency room as opposed to your example, in obstetrics.

Tammy Buchholz: I'm sure there are; however, I'm unable to provide them to you.

Sen. Luick: At what point do you decide whether it's verbal abuse or just somebody that is out of control. Who makes the decision on that? Is it each and every person that is being affected? For myself, I could probably take a log of verbal abuse, but someone else they would cut it off sooner.

Tammy Buchholz: I can only speak personally and working as a professional in that setting. People are at their most vulnerable when they enter the healthcare setting. Certainly we are going to allow for some of those behaviors. I dare say that there is probably a lot more allowed in that setting than what we would allow in our personal lives, with our friends or with people on the street in general. However, I think we probably could all come to a fairly close agreement about what is appropriate and what is inappropriate with regard to how you are speaking to someone. There's a number of things that come into play; what is their behavior, what is their body language, is it threatening, what is their tone. In assessing the situation as a nurse, of course, I would try to see if there seems to be some sort of overt threat.

Sen. Luick: At what point, or who makes the decision whether this has happened or not, or is there a review board that looks at this, because if there is something that is obviously tangible that is thrown at a nurse, and there is evidence there, but how about the proof that something actually happens.

Tammy Buchholz: The process, the instances that I have been involved with, it was a decision made by myself, that I felt threatened or others who were in the room with me who were providing care were threatened. I then report that. As with St. Alexis, I work at Sanford Health here in Bismarck, so we have internal people who are going to help with that; whether it is a manpower alert that we would call, if we felt like someone needed to be removed from the situation. We also have security in-house; however, if we needed to go further than that, we would certainly have to call law enforcement because we do not have them on site. It would be a decision of the professional health

care provider who is in that setting or in that room, whether it be the nurse or the physician.

Ch. Hogue: Thank you.

Daniel Hanaher, with the Health Policy Consortium: Support (see attached #5 - letter from Susan Jarvis). In Minot, they have seen a rapid increase in sexual assaults going from where they used to have perhaps three a year, now to seeing perhaps 3 a week. Oftentimes in those cases, not only is the victim presented at the hospital, but also the perpetrator because there has been an altercation that's taken place; perhaps both individuals are hospitalized and so we have the perpetrator of a crime hospitalized inducing a lot of fear amongst care givers within the facility. The police aren't able to arrest that individual on site, because if they did that, they would have to encumber all of the expenses of that individual's healthcare until discharge. A perpetrator of a crime is within the healthcare environment with no recourse but to take care of him or her. That is just an illustration of a potential problem.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2193
2/3/2015
23107

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will take a look at SB 2193. What are the committee's wishes?

Sen. Armstrong: I move a Do Not Pass.

Sen. Casper: Second the motion.

Sen. Armstrong: I will explain what this bill does. In ND we have a classification of crimes and what they are. They are equal to everybody in very limited circumstances and in fact this is the only place I know of in the NDCC that does that. Law enforcement for EMTs, member of the state hospital, essentially anybody who has a badge and/or gun acting in their official capacity as an agent of the state of ND. We escalate what would normally be a class B misdemeanor to a felony. This bill would take one group of private citizens and escalate the crime against them to the same felony level. The testimony is that. Keep in mind, it wouldn't deal with the hospital administrator, hospital security guard. It would only deal with doctors and nurses. The underlying issue is important and the issues that most of these crimes deal with are spitting. There are other serious ones, but if you think that the underlying crime is so significant that it should be escalated to a felony level, then it should apply to teachers, counselors, public defenders, it should apply to everybody the same way. When you start classifying out different private groups of individuals in the criminal code, that's a policy decision that I am not comfortable supporting under any circumstances. The criminal code is supposed to apply to every person in the state of ND equally. This bill would significantly change that policy as to one specific set of victims of a crime. In the Code, we have essentially two different kinds of victims of crimes, adults and children. This would add doctors and nurses to a third

classification of a crime. The incidents that they are speaking to are already crimes; this would just enhance the penalty for one particular group of citizens as compared to another group of citizens. I understand their testimony and why they are here.

Ch. Hogue: I thought of amending this bill to remove the officers as well from the offense specifically for spitting. When you think about it, spitting is a criminal offense now. In a typical fact pattern the most common situation where this statute would come up is spitting. The officer arrests somebody who is intoxicated, they are either going to arrest them or take them to the ER and have blood drawn and presumably it's a misdemeanor for either public intoxication or driving while under the influence and all of a sudden the person is a little amped up and they spit on the officer. Now we've just converted this incident which is a misdemeanor into a C felony. Why is that, just because they were disrespectful to the officer? Spitting on somebody is not a very nice thing to do, but is it a C felony for spitting on somebody. I didn't make that amendment. I resigned myself to the fact that we ought not to be expanding what is not very nice behavior to a C felony. That is what this bill does. It says it was a class B misdemeanor; we're going to make it a felony. I can't get there; I can't subject somebody to a felony for spitting on somebody.

Sen. Grabinger: We heard testimony from the doctor who was choked. Does that become an aggravated case where it would already be to that level, or do we treat that the same as spitting.

Ch. Hogue: No, that is an assault.

Sen. Armstrong: That was charged as serious bodily injury.

Sen. Casper: I asked them that during the hearing. There was another charge.

Sen. Armstrong: It was charged as a felony. That would be charged as a felony for anybody. The problem is that if you walk into a hospital ER and you spit on the nurse and the security guard and the secretary working at the desk, spitting on the secretary is a misdemeanor, the spitting on the security charge is a misdemeanor, but the spitting on the nurse is a felony if this bill passes. That is treating three different private citizens very differently in the ND criminal code.

Ch. Hogue: I just don't think spitting rises to the level of being charged as a felony. Every session we are being asked to ratchet up penalties. I think we are doing that with Human Trafficking and I think that there is support for that. We always have to ask ourselves if this conduct really rises to the level of a felony and I can't get there.

Sen. C. Nelson: What would happen if we deleted section 1 and kept section 2? It says it is an offense, it doesn't say what offense. They were talking about more than just spitting. They were talking about blood, etc.

Sen. Armstrong: Number 3 is not on here, subsection 2c under 12.1-17-11, mirrors the other one, it says the offense is a class C felony if the individual knowingly caused the contact and as a class A misdemeanor if the individual recklessly caused the contact. It would still be a felony. Section 2 just mirrors 1 and breaks out who the escalation occurs for. In my opinion, if you look at (a) through (e) they are all acting in a capacity as a state agent in an official capacity; (f) is one of these things isn't like the other. Doctors have a tough job and they have to deal with people, but I would argue that so do teachers, counselors, public defenders, so does the secretary working at the ER. Doctors and nurses are private citizens; they have some requirements that are different but there are a lot of people who are private citizens that don't have the choice of who they come in contact with.

Ch. Hogue: We will take a roll call vote.

6 YES 0 NO 0 ABSENT

DO NOT PASS

CARRIER: Sen. Casper

Date: 2/3/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2193

Senate _____

JUDICIARY

Committee _____

Subcommittee

Amendment LC# or Description: _____

- Recommendation:
- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions:
- Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Casper

REPORT OF STANDING COMMITTEE

SB 2193: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2193 was placed on the
Eleventh order on the calendar.

2015 TESTIMONY

SB 2193

1-1



Senate Judiciary Committee
SB 2193
January 26, 2015

Chairman Hogue and Committee Members, I am Courtney Koebele and I serve as Executive Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

The North Dakota Medical Association is in strong support of SB 2193. This issue was brought to the medical association by the North Dakota Chapter of Emergency Physicians. They are seeing a large increase in assaults in the workplace. The NDMA House of Delegates reviewed this issue and adopted a resolution to move forward in protecting all healthcare providers.

There are two sections to the bill which add healthcare provider as a protected category.

Section one addresses Simple Assault. Currently, North Dakota law provides for an assault classification of Class C Felony when the victim is:

1. a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact;
2. an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3;
3. a person engaged in a judicial proceeding; or
4. a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.

Section one of SB 2193 inserts a healthcare provider acting in the scope of employment, which the actor knows to be a fact, as one of the victim categories. Emergency room workers are currently protected, however, with the increase of access to medical care in all sorts of settings, including after-hours clinics, there was a strong feeling that this protection should be extended to all healthcare providers.

* 1-2

Assaults against healthcare workers are rising. According to OSHA, 48% of all non-fatal injuries from occupational assaults and violent acts occurred in healthcare and social services settings. This law would make the punishment for assaulting a healthcare provider just as severe as the penalty for assaulting a law enforcement officer, employee at the state hospital, a person engaged in a judicial proceeding, volunteer firefighter, or EMT. This will send a clear message that we are serious about protecting the professionals who make it their life's work to protect others. Identical to the currently protected professional individuals, healthcare providers are obligated to offer assistance, therefore, we believe the same protections should be in place.

Section 2 of the bill adds health care provider acting in the scope of employment to the list of victims of contact with blood, emesis, excrement, mucus, saliva, etc. When this issue was first being discussed, only the assault law was at issue. Then when more healthcare providers heard about the bill, most requested that this issue be addressed as well. They are seeing a rise in this sort of offense against members of their profession.

For all of the above stated reasons, we request that your support for SB 2193. Thank you.

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Senate Judiciary Committee

SB 2193

January 26, 2015

Chairman Hogue and Committee Members, my name is Tyler Price. I am a graduate of UND School of Medicine, and am currently working as an Emergency Department physician here in Bismarck.

I stand before you on behalf of The North Dakota Chapter of the American College of Emergency Physicians, in support of SB 2193.

At the most recent ND ACEP meeting, representatives from Minot, Grand Forks, and Bismarck discussed concerns of increasing violence in the emergency departments in ND. The causes of this increased violence range from alcohol intoxication, and drug abuse to demanding narcotics or specific tests by the patients. Examples of violence that have been brought forth include workers being bitten, spit on, bodily fluid (blood, urine, feces, etc) thrown at them, kicked and being strangled.

We take care of all types of patients in the emergency department with open arms on a daily basis. We, the doctors, nurses, and ancillary staff, all have loved ones at home that we look forward to seeing at the end of every shift so we do not believe that being "assaulted" should be considered just "part of the job" or a "risk we take" while working in the an emergency department. We also understand that there are patients with chronic medical and mental health conditions that may do things that could be considered assault, however, it is not our intention for this bill to apply to these patients.

We have a shortage of healthcare workers in our state and this amendment is an important step to help keep us safe, help retain quality healthcare workers and provide a safe and welcoming place of healing for the sick and those in need.

I, along with all healthcare providers, thank you for the opportunity to testify, your time, and your attention. I will gladly stand for any questions.



North Dakota Hospital Association

Vision

The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.

Mission

The North Dakota Hospital Association exists to advance the health status of persons served by the membership.

**Testimony: SB 2193
Offenses of Assault
Senate Judiciary Committee
January 26, 2015**

Good morning Chairman Hogue and Members of the Senate Judiciary Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association (NDHA). I am here today in support of SB 2193 and ask that you give this bill a **Do Pass**.

Currently there are a number of occupations covered by Subsection 2 of section 12.1-17-01 of the North Dakota Century Code. I believe as do a number of members of the Hospital Association that Medical Workers should be included.

The North Dakota Hospital Association wants to be on record as supporting this addition. Again I ask that you give SB 2193 a **Do Pass**.

Respectfully Submitted,

Jerry E. Jurena, President
North Dakota Hospital Association

Tammy
Buholtz

4-1

North Dakota Medical Association
Attention: Courtney Koebel
1622 East Interstate Avenue
Bismarck, North Dakota 58503

Friday, December 19, 2014

To Whom It May Concern:

I am writing on behalf of the North Dakota Nurses Association in support of your legislative bill regarding assaults on healthcare workers.

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as "any physical assault, threatening behavior or verbal abuse occurring in the workplace. Violence includes overt and covert behaviors ranging in aggressiveness from verbal harassment to murder."¹

The U.S. Department of Labor, Bureau of Labor Statistics stated that "48% of all non-fatal injuries from occupational assaults and violent acts occurred in health care and social services settings."²

According to the Bureau of Labor Statistics³, Nurses make up over 45% of all healthcare workers, and as such are the most likely to be experience workplace violence². As nurses, we are among the most assaulted in the American workforce. This exposure to violence and risk affects nurses' perceptions of their profession, which can lead to disillusionment, fear, decreased job satisfaction, and ultimately leaving the profession. In a time of a widespread nursing shortage in the state of North Dakota, the threat of violence undermines recruitment and retention efforts².

Expanding the current statue in the North Dakota Century Code to include health care providers is an important protection for all health care workers, including the nurses we represent. Thank you for bringing this legislation forward and please let us know if there is anything we can do to help support the passage of this bill.



Kristin Roers, MSN, RN
Vice President of Government Relations
North Dakota Nurses Association

Roberta Young
President
North Dakota Nurses Association

¹ American Nurses Association, Policy & Advocacy, *Workplace Violence*, June 30, 2014, accessed December 19, 2014

² US Department of Health and Human Services, Health Resources and Services Administration, *Violence Against Nurses, "An Assessment of the Causes and Impacts of Violence in Nursing Education and Practice* , December 2007

³ Bureau of Labor Statistics, US Department of Labor, *Occupational Employment Statistics, "Occupational Profiles"* May 2012, accessed August 14, 2013

SB 2193
4/26/15

Testimony: SB 2193
Senate Judiciary Committee
January 26, 2015

To Whom It May Concern:

I am unable to testify in person in favor of SB 2193 bill regarding assaults on healthcare workers. Please accept this as my written testimony supporting the bill.

I am the Vice-President of Emergency, Trauma and Critical Care Services at Sanford Health in Fargo. In my 30 plus year career as a nurse and a healthcare executive, I have seen violence against healthcare workers increase greatly. The U.S. Department of Labor, Bureau of Labor Statistics states that "48% of all non-fatal injuries from occupational assaults and violent acts occurred in health care and social services settings.¹" I have personally, over the past several years, been involved with staff members who have been assaulted by patients and injured both physically and emotionally. Healthcare workers have an obligation to care for any patient needing their attention. They can't "opt out" because a patient has a history of violence or mental illness. Healthcare workers put themselves in harm's way each and every day, and many are assaulted and injured.

Early in my career as an Emergency Department nurse, acts of violence seemed to be limited to the pre-hospital or emergency environment. However, in recent years, I have witnessed acts of violence against healthcare workers in all healthcare settings, including inpatient hospital units and clinics. Healthcare workers are in danger every day, regardless of the setting.

Expanding the current statute in the North Dakota Century Code to include health care providers is an important protection for all health care workers and must be passed.

Susan D. Jarvis, RN, MSN
Vice-President
Emergency, Trauma & Critical Care Services
Sanford Health
Fargo Medical Center
